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## 2006 Decisions

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## Opinions of the United States Court of Appeals for the Third Circuit

10-3-2006

# Tjhin v. Atty Gen USA

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**NOT PRECEDENTIAL**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

No. 05-5108

SANDI SUTARDI TJHIN,

Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES;  
SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY,

Respondents

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On petition for review of a final order  
of the Board of Immigration Appeals  
File No: A95-467-065

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Submitted pursuant to Third Circuit LAR 34.1(a)  
on September 28, 2006

Before: RENDELL, ROTH, and  
JOHN R. GIBSON, \* *Circuit Judges*

(Filed: October 3, 2006)

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OPINION OF THE COURT

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\*The Honorable John R. Gibson, Senior Circuit Judge for the United States Court of Appeals for the Eighth Circuit, sitting by designation.

PER CURIAM.

Sandi Sutardi Tjhin, a native and citizen of Indonesia, petitions for review of the order of the Board of Immigration Appeals denying his application for asylum, withholding of removal, and relief pursuant to the Convention Against Torture.

Tjhin failed to apply for asylum within a year of his arrival in the United States. See 8 U.S.C. § 1158(a)(2)(B). The Immigration Judge found that there were no extraordinary circumstances that would excuse the delay. See 8 U.S.C. § 1158(a)(2)(D). The Board of Immigration Appeals adopted and affirmed the IJ's decision that Tjhin failed to comply with the statutory deadline. Tjhin does not attack this finding, and in any case, this court would have no jurisdiction to review such an attack on the Board's factual or discretionary determinations as to timeliness of his application. 8 U.S.C. § 1158(a)(3); Sukwanputra v. Gonzales, 434 F.3d 627, 635 (3d Cir. 2006).

Tjhin contends that he is entitled to withholding of removal because he was persecuted on the basis of his Chinese ethnicity and he fears future persecution on that ground. To be eligible for withholding of removal, Tjhin was obliged to show a clear probability that his life or freedom would be threatened because of his race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1231(b)(3); INS v. Stevic, 467 U.S. 407, 429-30 (1984). The Board held that Tjhin failed to prove a likelihood of persecution on a protected ground.

This court reviews the Board's factual findings under the substantial evidence test, and we must uphold them unless any reasonable finder of fact would be compelled to find

to the contrary of the findings. 8 U.S.C. § 1252(b)(4)(B); INS v. Elias-Zacarias, 502 U.S. 478, 481 n.1 (1992). Tjhin's testimony about the incidents of violence he experienced in Indonesia does not compel a finding that the motivation for the incidents was ethnic hatred, nor do the incidents show a pattern or practice of persecution of Chinese ethnics, as opposed to random criminal activity. See Lie v. Ashcroft, 396 F.3d 530, 535-37 (3d Cir. 2005).

Tjhin does not pursue his claim for relief under the Convention Against Torture.

We will deny the petition for review.